



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 10, 1996

Ms. Y. Qiyamah Taylor  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-2345

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103027.

The City of Houston (the "city") received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code.<sup>1</sup> You have submitted to this office a representative sample of the records you seek to withhold.<sup>2</sup> To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

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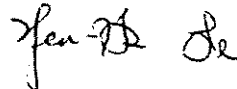
<sup>1</sup>We note that you did not raise section 552.103 as an exception to disclosure within the ten days following the city's receipt of the open records request. *See* Gov't Code § 552.301(a). This office usually will not consider an exception raised after the initial ten days unless there exists a compelling reason for doing so. Open Records Decision No. 515 (1988) at 6. In this instance, however, you informed this office that the city received notice of the lawsuit shortly after you submitted your request to this office. Because you timely informed this office of the change in circumstances surrounding the request, we will consider the applicability of section 552.103 to the records at issue. *See* Open Records Decision No. 638 (1996) at 4.

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/rho

Ref.: ID# 103027

Enclosure: Submitted documents

cc: Mr. Dwayne L. Mason  
Matthews and Associates, L.L.P.  
P.O. Box 572957  
Houston, Texas 77257-2957  
(w/o enclosures)

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<sup>3</sup>Because we resolve your request under section 552.103, we need not address at this time the other exceptions you have raised.